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Supreme Court of the United States

RONALD L. TODD and RICHARD CUCHRAN, by his parents and next friends, DEATHERS CUCHRAN and PATRICIA CUCHRAN, and JAMES HILL,

Petitioners,

v.

JOINT APPRENTICESHIP COMMITTEE OF THE STEEL WORKERS OF CHICAGO AND INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL UNION NO. 1, Sidney L. Cole, Chairman, Frank D. Reiland, Treasurer, A. Walter Becker, Thomas Cannon, James Eads, Joseph Frankovic, Stanford Jacobs, and Edmund D. Flood, Apprentice Co-Ordinator, IRON WORKERS BRIDGE AND STRUCTURAL UNION, LOCAL NO. 1, Steve Zakula, President, Frank Panley, Secretary-Treasurer, Joseph Frankovic, Job Representative, and Edmund D. Flood, Apprentice Co-Ordinator, BETHLEHEM STEEL COMPANY, a Delaware corporation,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR RESPONDENT LOCAL UNION NO. 1 IN OPPOSITION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

NO. 380

RONALD L. TODD and MICHAEL COCHRAN, by his parents and next friends, ULYSSES COCHRAN and PATRICIA COCHRAN, and JAMES HILL,

Petitioners,

vs.

JOINT APPRENTICESHIP COMMITTEE OF THE STEEL WORKERS OF CHICAGO AND INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL UNION NO. 1, Sidney I. Cole, Chairman, Frank D. Reiland, Treasurer, A. Walter Becker, Thomas Cannon, James Eads, Joseph Frankovic, Stanford Jacobs, and Edmund D. Flood, Apprentice Co-Ordinator, IRON WORKERS BRIDGE AND STRUCTURAL UNION, LOCAL NO. 1, Steve Zakula, President, Frank Pauley, Secretary-Treasurer, Joseph Frankovic, Job Representative, and Edmund D. Flood, Apprentice Co-Ordinator; BETHLEHEM STEEL COMPANY, a Delaware corporation,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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BRIEF FOR RESPONDENT LOCAL UNION NO. 1 IN OPPOSITION

QUESTION PRESENTED

Whether an action seeking only to enjoin defendants from proceeding with the performance of a specific General Services Administration contract for construction, or in the alternative, restraining further payment under such government contract unless and until plaintiffs were employed, is rendered moot by the completion of the work to be done under said contract.

STATEMENT

Petitioners (Negro Americans)[1] filed an action in the District Court seeking to compel Bethlehem Steel Company (Bethlehem) to employ them specifically as iron worker apprentices on the construction of a United States Court House and Federal Office Building under General Services Administration (GSA) construction contract No. GS 5 PC-1178.[2] Alternatively, Petitioners sought to have the gov-

1. No printed record or appendix has been filed with this Court. The letters "Tr." followed by a number refer to the pages of the Transcript of Proceedings in the District Court. Where no transcript references appear the facts are taken from the opinion of the Court of Appeals, appearing as Appendix B to the Petition, pages 29a-37a.

2. On October 26, 1962, Paschen Contractors, Inc. and Peter Kiewit Sons Co., Contractors, entered into Contract No. GS-5 PC-1178 with the General Services Administration to construct a United States Court House and Federal Office Building in Chicago, Illinois. Paschen, etc. entered into a subcontract with Respondent, Bethlehem Steel Company for the fabrication and erection of structural steel on such project.

ernment payments to Bethlehem withheld pending their employment on the job. The GSA construction contract incorporated by reference Presidential Executive Order No. 10925 (Petition, App. 49a *et seq.*) which, *inter alia*, prohibited racial discrimination in the performance of government contracts (such as involved herein). Additionally, the contract provided that apprentices "will be permitted to work only under a bona fide apprenticeship program registered" with the United States Department of Labor. Such a program was in effect and administered by the Joint Apprenticeship Committee (JAC)[3] consisting of an equal number of representatives from the Chicago Steel Erectors (a city wide employer association) and Local Union No. 1, Ironworkers (Union),[4] the instant Respondent.

In addition to Bethlehem, the Complaint joined as defendants, the Regional Administrator for the GSA, the JAC and the Union. Later the Chicago Board of Education and the Regional Director of the United States Department of Labor were also made defendants.

Petitioners' Complaint is set forth herein as Appendix A (App. 1 to 8). Filed on September 26, 1963 (the contract was awarded on October 26, 1962) it alleged that a contract had been awarded to construct a United States Courthouse and Federal Office Building in Chicago, Illinois and that the contract required the contractor and all subcontractors not to discriminate against any employee or applicant for employment because of race, creed, color or

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3. The full name of the JAC is the Joint Apprenticeship Committee of the Steel Workers of Chicago and International Association of Bridge, Structural and Ornamental Ironworkers Local Union No. 1.

4. The full name of the Union is International Association of Bridge, Structural and Ornamental Iron Workers, Local Union No. 1.

national origin and to take further steps consistent with such requirement (Par. 1 of Complaint, App. 3). The Complaint further alleged that the contract required that where there was an apprenticeship program approved by the United States Department of Labor, apprentices would be permitted to work on such job under said contract only under such apprenticeship program (Par. 1, App. 5). After reciting that Petitioners were negroes and that they satisfied the minimum requirements for becoming apprentices (Par. 3, App. 6), the Complaint alleged that Petitioners sought employment with Bethlehem Steel Company, a sub-contractor under said contract, and that Bethlehem Steel Company had refused or failed to employ them on the particular project covered by the said contract (Par. 4, App. 6-7). The Complaint thereafter sought the enforcement of the alleged rights of Petitioners under said contract for construction (Par. 6, App. 7),[5] and prayed that the

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5. The Court of Appeals summarized the allegations of the Complaint as follows (Pet. App. 33a-34a):

"1. Provisions of Contract No. GS-5 PC-1178.

2. Provisions of the iron workers apprenticeship program.

3. That plaintiffs were native born citizens and Negroes.

4. That plaintiffs and all persons who constitute the class to which they belong were eligible to qualify for the apprenticeship training program; that they made application therefor and were denied certification solely because of their race and color.

5. That in April, 1963, plaintiffs sought employment on the construction project from Bethlehem, which was denied because they were Negroes.

6. That plaintiffs brought the action on behalf of themselves and the class to which they belong and have failed to secure enforcement of their rights to employment under the terms of Contract No. GS-5 PC-1178.

7. Provisions of Executive Order No. 10925."

defendants be enjoined from proceeding in the performance of the specific contract of construction (identified throughout the Complaint as Contract No. GS-5 PC-1178) unless and until Petitioners were regularly employed as iron worker apprentices, or in the alternative, the Complaint requested that no payments under said contract be made until such time as Petitioners were employed (Prayer of Complaint, App. 8). Neither damages nor any other relief was requested. Specifically, the prayer for relief read as follows (Pet. App. 34a, App. 8):

> "Wherefore, the plaintiffs respectfully pray this Court to enjoin the defendants and each of them from proceeding with the performance of Contract No. GS-5 PC-1178 unless and until plaintiffs and each of them is duly and regularly employed as an iron workers apprentice or in the alternative that this Court enjoin and restrain the defendants and each of them from making or receiving any payments on account of such contract unless and until plaintiffs and each of them is duly and regularly employed as an iron workers apprentice."

As the Court of Appeals stated, "The evidence considered by the trial court (at the trial on the preliminary injunction) related primarily to Contract No. GS-5 PC-1178 and the failure of Bethlehem to employ plaintiffs on that construction project." (Pet. App. 34a). "Some of the defendants (such as the instant Respondent) introduced no evidence" *(Ibid)*—from the outset Petitioners confined their action to one involving employment at specific work by a specific contractor on a specific job at a specific location under a specific GSA contract.[6]

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6. Illustratively, see comments of Petitioners' counsel in open court on September 27, 1963:

> "Now we complain in our complaint that though the plaintiffs are qualified . . . and despite the plain provision of the contract . . . the contractor, subcontractor and none of the defendants

On November 8, 1963, the trial court entered a preliminary injunction requiring Bethlehem to employ Petitioners as apprentice iron workers when properly certified by the JAC and the Union, directed the Union to admit Petitioners as members of the Union and the JAC to certify them as apprentices (Pet. App. 65a-67a). The preliminary injunction was entered *nunc pro tunc* as of October 16, 1967.[7] On

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have provided for these plaintiffs the benefits which this contract contemplates will be available to the plaintiffs and to the class of persons that represents. (Tr. 10).

"So we are here as third party beneficiaries to a contract asking the court to furnish its aid in enforcing a contract . . . or, to put it in another way, **this is a simple case in which the plaintiffs seek to enforce the contract** as to which, though they are not parties, they are beneficiaries, and being beneficiaries, we assert their right to enforce that contract to secure the benefits intended for them (Tr. 10-11). (Emphasis supplied).

"I think the Court will recognize that construction work being what it is, i.e., performance of a contract by which the work having been done, the contract terminates. **That unless we are provided with equitable relief the rights of these plaintiffs which are the rights under the contract to be hired and to be trained will be dissipated upon the performance of the contract.** (Tr. 11). (Emphasis supplied).

"So that further in aid of our application for equitable relief we point out to the court what we are really seeking to do is to invoke the courts of the United States to enforce the contract . . . (Tr. 14).

"They (plaintiffs) are citizens of the United States. They seek to assert rights provided for them in a contract between the United States and private persons and **we ask the court, and we have suggested in our prayer for relief that the court either restrain continued performance of the contract . . . or that the court require the parties not to pay or accept money in connection with the performance of the contract.**" (Tr. 14-15). (Emphasis supplied).

7. The Court of Appeals found it unnecessary to reach the question of "whether the district court had authority to apply an injunction retroactively by the issuance of a *nunc pro tunc* order." (Pet. App. 37a).

October 11, 1963, Bethlehem apprised the trial court in writing that "no more apprentice iron workers would be employed on the job site in question, its subcontract being substantially completed at that time." (Ct. of Appeals Dec., Pet. App. 34a). "On October 22, 1963, respective counsel of the parties appeared before the trial court for the purpose of setting bond, the entry of formal findings of fact and conclusions of law and a formal decree. At that time, Bethlehem advised the court that 'all work of Bethlehem on the site in question will be concluded tomorrow.' The court then stated, 'Very well, the record may so show' " (*Id.* Pet. App. 35 a).

Following the filing of the Record in the Court of Appeals, Respondent (along with the JAC and Bethlehem) moved to remand the cause to the district court to dismiss because of mootness. The Court of Appeals so directed.[8]

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8. The Court of Appeals specifically stated that it did not "reach the question of the validity of the trial court's findings and conclusions and its judgment and decree based thereon." (Pet. App. 37a). Apart from the issue of mootness, questions raised before the district court included its refusal to permit the intervention, as indispensable parties, of other applicants for apprenticeship who had made prior application and who would be harmed if Petitioners were employed before or in lieu of them; questions relating to preemption and the exclusiveness of remedy before the National Labor Relations Board; See *Hughes Tool Company*, 147 NLRB No. 166 (1964), holding that unequal treatment by a union of members of a bargaining unit because of race violates the National Labor Relations Act and *Miranda Fuel Company, Inc.*, 140 NLRB 181 (1962) holding it illegal for a union to take any action against an employee upon the basis of classifications or considerations "which are irrelevant, invidious, or unfair."; questions of the failure to exhaust administrative remedies. See *Farmer* v. *Philadelphia Electric Company*, —— F 2d ——, 55 LRRM 2685 (March 12, 1964), holding that a Federal District Court did not have jurisdiction of a damage action by a discharged employee against a government contractor based on a charge that the contractor had dismissed the employee because of his race in violation of non-discrimination provisions required in government contracts by Executve Orders and imple-

ARGUMENT

The Court of Appeals properly directed that this action be dismissed for mootness. As the Court stated, "In the instant case, we have before us merely a temporary injunction applicable only to the specific construction project to which it was addressed." (Pet. App. 37a). The Court's "study of the record convince(d) (it) that plaintiffs, by this action, sought to enjoin defendants from proceeding with the performance of Contract No. GS-5 PC-1178 unless and until they were regularly employed as iron worker apprentices by Bethlehem on this construction site; or, in the alternative, restraining further payments to . . . Bethlehem until such employment was granted." (Pet. App. 36 a). Petitioners complained only about Bethlehem's contract for steel erection on the federal courthouse project in Chicago under GSA contract No. GS-5 PC-1178. To the extent that the GSA contract required Bethlehem to employ only apprentices indentured under a registered apprenticeship program, if such program was in existence—and because there was a program in existence administered by the JAC, which included representatives from the Union, the JAC and the Union were joined as party defendants. Finding for Petitioners, the Trial Court directed the JAC to indenture Peti-

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menting regulations, since the plaintiff had failed to exhaust the administrative remedies provided in the Executive Orders; whether membership in a union could be ordered as a matter of right, See *Steele* v. *Louisville & Nashville Railroad Company, et al.*, 323 U. S. 192 (1944), where, in upholding the right of non-member negro railroad firemen to fair and impartial representation by their statutory bargaining representative under the Railway Labor Act, the Court nevertheless stated, ". . . the statute does not deny to such a bargaining labor organization the right to determine eligibility to its membership . . ."; and evidentiary matters such as whether the mere absence alone of a condition (employment of negro iron workers) could form the basis of a finding of discrimination. This Respondent, in the light of the limited question in this case, introduced no evidence. See circa text. fn. 6, supra.

tioners as apprentices under the apprenticeship program, the Union to take them into membership, and Bethlehem to employ them on the specific construction project as iron worker apprentices. The portion of the Decree dealing with indenture of Petitioners by the JAC, admission into the Union, and certification by the JAC to Bethlehem was solely to permit the employment of Petitioners as apprentices by Bethlehem consistent with the terms of the GSA contract which required Bethlehem to employ only apprentices who had been certified under a registered apprenticeship program. Bethlehem's contract having been fulfilled at the time of the entry of the Decree, any case or controversy which might have existed prior thereto had come to an end. The employment of Petitioners on the Bethlehem project under contract No. GS-5 PC-1178 was moot. And the employment by Bethlehem was the only issue litigated. No other contractor or construction project was involved, nor did Petitioners complain in any general way that they were deprived of any rights cognizable or for which a remedy could be granted by a federal court.

Petitioners, as they suggest, have not been deprived of a remedy. They themselves elected to file suit involving a specific job under a specific GSA contract. Should they complain in the future [9] that they were illegally deprived of

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9. At no time did the Union resist the employment of Negro iron workers In fact, the only evidence in the record reflects that they had no objection to the employment of Negro journeymen iron workers immediately or as Bethlehem saw fit (Tr. 330-335). Nor did the Union or JAC refuse to accept the applications of the Petitioners for apprenticeship indenture (Tr. 343-344, 636). They only insisted that the Petitioners, like all other applicants, wait to be called from the roster of apprentice applicants based upon the availability of apprenticeship openings in the industry—the JAC being required to consistently keep an apprentice employed during his term of indenture once he was certified (Tr. 671). Because of the contention that the "slate should be wiped clean" and all applicants

employment on another construction project they would be required to file an independent action relating to such project or all projects in general. And if such were to occur, the complaint would determine the nature of the issues.[10] As regards the project here, there was nothing to enjoin or mandatorily direct. And Petitioners are more than aware of this. On page 13 of their Petition they state that "what the court below has done is to seize upon an apparent present impossibility of compliance with the precise terms of

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for apprentice be assigned not on the basis of seniority in making application but rather on objective testing applicable, both to prior and current applicants, the JAC instituted a new system of objective testing based upon predetermined standards and requested all applicants to appear for such testing. Petitioners, along with all other applicants were notified of the time and place to appear (App. B, 9-11). Indicative of Petitioners' desire not to become apprentices as such under the apprenticeship program but rather to be employed on this particular Bethlehem job, Petitioners filed for (App. C, 12-15) and secured (App. D, 16-17) a temporary restraining order before District Judge Walter LaBuy restraining the JAC from applying the testing procedure to Petitioners. The temporary restraining order was secured in the absence of Judge Campbell, the trial judge in the instant matter, and when he returned (February 3, 1964) he refused to extend same, and dismissed it for "want of jurisdiction". Indentured apprentices under the apprenticeship program not assigned to one employer as such are kept employed for a three year period with various employers in the Chicago area and directed to employment by the JAC consistent with the needs of the industry and training sought to be secured in behalf of the apprentices (Tr. 667-668, 690).

10. As commented upon in fn. 9, supra, the objection of the JAC and the Union to Petitioners' position was that they not only sought preference over other applicants (which in the opinion of the JAC and the Union would have exposed them to claims of discrimination made by other applicants) but additionally, Petitioners sought specific employment on a specific job rather than to integrate into an apprenticeship program which covered all jobs within the Chicago area. Although the trial court stated that he would permit the intervention in the case (Tr. 917) of other applicants for apprenticeship, upon motion of such other applicants, he refused intervention (Order of Nov. 8, 1963, denying certain post-trial motions).

the decree by *one* of the parties to the litigation, Bethlehem, to seek to justify the court's ignoring the actual controversy between" Petitioners and the Union. Yet, the Union here is only an incidental and derivative beneficiary of the litigation, obviously joined solely because GSA contract No. GS-5 PC-1178 required apprentices to be employed under an approved apprenticeship program which in this instance was administered by a joint committee composed of Union and employer association representatives. Now, at this juncture, Petitioners seek to convert this lawsuit into a continuing controversy with the Union. If such controversy persists, as the Petitioners urge, it does not exist in any judicial sense in this case.[11] If Petitioners felt they had (or

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11. Admittedly, the Negro's problem cannot be solved unless decent jobs are made available to him. Unemployment and under employment compound themselves to impose an even greater feeling of inadequacy which in itself prohibits the acquisition of employment necessary to create a measure of self respect. Clearly, "equal opportunity," applied with traditional concepts of equality will produce very little, for the ability to compete equally does not exist because someone is now told he is equal, no more than the growth of labor unions could have occurred without the additional ingredient necessary to create equality—a recognition of the inequalities and affirmative steps to correct the same as reflected in Section 1 (Findings and Policies) of the National Labor Relations Act (61 Stat. 136, 29 USC § 151) (the "inequality of bargaining power", *etc.*). Here, however, we are confronted with a local apprenticeship program which at its maximum contains 50 apprentices with a waiting list perhaps two to three times its size. To prefer an applicant because he is negro (rather than not to discriminate because of such factor) is, of course, an act of "positive discrimination". *See,* Silberman, *Crisis in Black and White* (Random House, 1964) page 237. Eventually, the moral requirement of effective emancipation (both *de jure and de facto*) will perhaps become a national policy and steps will be taken to equalize the competitive inequality in this generation while attempting, through education in all its facets, to let it equalize itself in future generations. But until such time occurs, directly, openly and without the hypocrisy which oftentimes attends political expediency, a small segment of our society, namely potential apprentices who by reason of prior

have) a cause of action against the Union nothing has prohibited them (or prohibits them) from filing same so that the issues generated by the type of action filed can be resolved by litigation or otherwise.[12]

Petitioners' question presents nothing novel. There is no conflict among the Circuits and the Court of Appeals decided the issue in accordance with prior decisions of this court. GSA Contract No. GS-5 PC-1178—the subject matter of this litigation—has been performed and "passed beyond

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application for the apprenticeship program have at least equal rights, cannot be discriminated against or considered expendable. And this is so, even though admittedly, impartiality, even if genuine, will not close the gap. Handicaps of lack of education, training, experience, the absence of appropriate familial and social exposure from the time of cognition, are problems of all culturally deprived groups of which perhaps the Negro may be the prime example. Preference to obtain employment for several negroes on a federal project, even if tokenism (which this is) may be a step forward if accomplished voluntarily (despite the protestations against tokenism by some negro leaders). But preference, judicially imposed without a clear national policy that such preference is an adopted avenue necessary in the national interest to correct inequalities can only reverse and impede the progress of those attempting to have the vast majority of our population accept equality, logically and emotionally—the catalytic force necessary to correct operational inequality.

12. It would seem that separate and apart from other remedies, to the extent that the apprenticeship program is registered with the Department of Labor, an adequate remedy exists administratively. As regards discrimination within registered apprenticeship programs, and the remedies available to correct same, see the Regulations of the Secretary of Labor concerning equal opportunity, etc., Issued December 13, 1963, effective January 17, 1964, 28 F. R. 13775, 29 CFR, Subtitle A, Sections 30.1 to 30.16). Moreover, the recently enacted Civil Rights Act of 1964, PL 88-352, 78 Stat. 241, and more particularly Title VII thereof, offers an additional effective remedy if one claims there has been a violation.

recall." *Bronlow* v. *Schwartz*, 261 U. S. 216, 217 (1923).[13] As Petitioners' counsel expressed in open court at the commencement of the trial, the action would be "dissipated upon the performance of the contract." (Tr. 11). And the contract has been performed.[14] ". . . (I)t is a settled principle in this court that it will determine only actual matters in controversy essential to the decision of the particular case before it. Where . . . the existing controversy has come to an end, the case becomes moot and should be treated ac-

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13. This case involved a mandamus action to compel the granting of a building permit. The court held that the issuance of the permit rendered the case moot. See also, *Mills* v. *Green*, 159 U. S. 651, 657 (1895) (the holding of an election rendered moot an injunction suit alleging illegal discrimination of registration for the election). *Richardson* v. *McChesney*, 218 U. S. 487, 492 (1910) (suit to enjoin redistricting act mooted by election); *Blackman* v. *Stone*, 300 U. S. 641 (1936) (suit to compel certification on ballots of certain candidates mooted by election); *Cook* v. *Fortson*, 329 U. S. 675 (1946) (suit to enjoin certification of results of election, mooted by accomplishment of certification); *Standard Fashion Co.* v. *Magrane-Houston Co.*, 258 U. S. 346 (1922) (suit to restrain alleged violation of contract held not moot only because issue of damages remained in case; *Bus Employees* v. *Wisconsin Board*, 340 U. S. 416 (1951) (suit to set aside arbitrator's award on grounds of invalidity of statute held mooted by settlement agreement of parties).

14. The administrative agency cases cited by Petitioners such as *Local 74, United Brotherhood of Carpenters* v. *NLRB*, 341 U. S. 707 (1951) and *Federal Trade Commission* v. *Goodyear Rubber Company*, 304 U. S. 257 (1938) are obviously inapplicable because there, violations of a statutory enactment were charged and the particular administrative agency, within the authority granted it by Congress, could fashion an appropriate remedy balancing the interests of the parties and extending the scope of an order consistent with the facts of the case. *See, Communication Workers of America* v. *NLRB*, 362 U. S. 479 (1960). The "cease and desist" orders of the administrative agencies are clearly continuing in order to effectuate the policies of the particular Act and matters relating thereto are obviously not moot if the scope of the order is properly within the power of the agency. Here all we have is a suit filed to employ Petitioners on a particular project or to withhold payment to the particular contractor pending such employment.

cordingly. However convenient it might be to have decided the question . . . this court 'is not empowered to decide moot questions or abstract propositions, or to declare, for the government of future cases, principles or rules of law which cannot affect the results as to the thing in issue in the case before it. . . .'' *California* v. *San Pablo & Tulare R. R. Co.*, 149 U. S. 308, 314; *United States* v. *Hamburg American Line*, 239 U. S. 466, 475, 476 . . .'' *United States and Interstate Commenrce Commission* v. *Alaska Steamship Company, et al.*, 253 U.S. 113 (1920). The Court of Appeals properly followed the "established practice of (this Court) that when an issue or controversy becomes moot prior to or during an appeal . . . all prior orders should be vacated and the cause remanded with instructions to dismiss. *Railroad Trainmen* v. *Chicago & I. M. R. Co.*, 375 U.S. 18 (1963); *Davis* v. *Soja*, 374 U.S. 495 (1963)." (Ct. of Appeals Dec., Pet. App. 37 a). As it stated, "No relief within the scope of the complaint could now be granted." (Pet. App. 36 a).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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Chicago, Illinois,
September 9, 1964.

APPENDICES

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APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RONALD L. TODD and MICHAEL COCHRAN by his parents and next friends, Ulysses Cochran and Patricia Cochran, and JAMES HILL,

Plaintiffs,

vs.

JOINT APPRENTICESHIP COMMITTEE OF THE STEEL WORKERS OF CHICAGO AND INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL UNION NO. 1, Sidney I. Cole, Chairman, Frank D. Reiland, Treasurer, A. Walter Becker, Thomas Cannon, James Eads, Joseph Frankovic, Stanford Jacobs, and Edmund D. Flood, Apprentice Co-Ordinator, IRON WORKERS BRIDGE AND STRUCTURAL UNION, LOCAL NO. 1, Steve Zakula, President, Frank Pauley, Secretary-Treasurer, Joseph Frankovic, Job Representative, and Edmund D. Flood, Apprentice Co-Ordinator, IRON WORKERS DISTRICT COUNCIL OF CHICAGO & VICINITY, Leslie L. Myers, President, Robert Benson, Secretary and William Knapp, Vice-President; PASCHEN CONTRACTORS, INC., a Delaware corporation; PETER KIEWIT SONS' CO., a Nebraska corporation; BETHLEHEM STEEL COMPANY, a Delaware corporation; and DOMINIC TESAURO, Regional Administrator, General Services Administration,

Defendants.

No. 63-C-1739.

COMPLAINT

Now comes DONALD L. TODD and MICHAEL COCHRAN, by his parents and next friends, Ulysses Cochran and Patricia Cochran, and JAMES HILL, all residents and citizens of the State of Illinois and of the United States of America by William R. Ming, Jr., and George N. Leighton, their attorneys, complaining of JOINT APPRENTICESHIP COMMITTEE OF THE STEEL WORKERS OF CHICAGO AND INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL UNION NO. 1, Sidney I. Cole, Chairman, Frank D. Reiland, Treasurer, A. Walter Becker, Thomas Cannon, James Eads, Joseph Frankovic, Stanford Jacobs, Edmund D. Flood, Apprentice Co-Ordinator; IRON WORKERS BRIDGE AND STRUCTURAL UNION, LOCAL NO. 1, Steve Zakula, President, Frank Pauley, Secretary-Treasurer, Joseph Frankovic, Job Representative, and Edmund D. Flood, Apprentice Co-Ordinator; and IRON WORKERS DISTRICT COUNCIL OF CHICAGO & VICINITY, Leslie L. Myers, President, Robert Benson, Secretary and William Knapp, Vice President, all of which organizations and individuals are sometimes collectively referred to hereinafter as the Union; Paschen Contractors, Inc., a Delaware corporation, and Peter Kiewit Sons' Co., a Nebraska corporation, hereinafter referred to as Contractors; BETHLEHEM STEEL COMPANY, a Delaware corporation, hereinafter referred to as Sub-Contractor; and DOMINIC TESAURO, Regional Administrator of the General Services Administration, hereinafter referred to as Administrator, hereby invoke the jurisdiction of this Court under the provisions of Title 28 U. S. C., Section 1331, in that the matter in controversy arises under the constitution and laws of the United States

and the amount in controversy is in excess of $10,000.00. For cause of action, plaintiffs allege:

1. On or about October 26, 1962, by Contract No. GS-5PC-1178 Contractors undertook and agreed to construct a United States Courthouse and Federal Office Building in Chicago, Illinois. One of the provisions of that contract was as follows:

> "In connection with the performance of work under this contract, the Contractor agrees as follows:
>
> (a) The Contractor will not discriminate because of race, creed, color or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Nondiscrimination clause.
>
> (b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.
>
> (c) The Contractor will send to each labor union or representative of workers with which he has a collective-bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the said labor union or workers' representative of the Contractor's commitments under this Nondiscrimination clause, and shall

post copies of the notice in conspicuous places available to the employees and applicants for employment.

(d) The Contractor will comply with all provisions of the Executive Order No. 10925 of March 6, 1961, and of the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

(e) The Contractor will furnish all information and reports required by Executive Order No. 10925 of March 6, 1961, and by the rules, regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the Nondiscrimination clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedure authorized in Executive Order No. 10925 of March 6, 1961, and such other sanctions may be imposed and remedies invoked as provided in the said Executive order or by rule, regulations, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

(g) The Contractor will include the provisions of the foregoing paragraphs (a) through (f) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the President's Committee on Equal Opportunity issued pursuant to section 303 of Executive Order No. 10925 of March 6, 1961, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States."

Another provision was as follows:

"Apprentices will be permitted to work only under a bona fide apprenticeship program registered with a State Apprenticeship Council which is recognized by the Federal Committee on Apprenticeship, U. S. Department of Labor; or if no such recognized Council exists in a State, under a program registered with the Bureau of Apprenticeship, U. S. Department of Labor."

At all times material herein there was in full force and effect in the State of Illinois, a bona fide apprenticeship program for iron workers which had been approved by the United States Department of Labor on September 30, 1952.

2. Under the provisions of the said iron workers apprenticeship program the only requirements for apprentices are:

"A. Applicants for apprenticeship shall be not less than eighteen (18) years of age nor more than thirty (30) years of age, have a pronounced aptitude and interest in this craft and be physically able to perform the required work.

B. They shall be American citizens or make declarations to become same, or Canadian citizens within the Dominion of Canada.

C. They shall provide proof of their age.

D. They shall keep such records of their apprenticeship training as may be required by the Committee."

3. Plaintiffs RONALD L. TODD, MICHAEL COCHRAN and JAMES HILL are twenty-three (23), twenty (20) and twenty-one (21) years of age respectively, and having been born in the United States, plaintiffs are citizens of the United States. They belong to the ethnic group commonly designated as Negroes. Plaintiffs and each of the persons who constitute the class to which plaintiffs belong have a pronounced aptitude and interest in the iron workers craft and are physically able to perform the required work. Each plaintiff provided proof of his age to the IRON WORKERS' JOINT APPRENTICESHIP COMMITTEE on or about the 12th day of June, 1963, and has demonstrated that he satisfies the minimum standards of education and experience for apprenticeship under the said apprenticeship program. Said Committee refused to certify plaintiffs as apprentices solely because of their race and color. Plaintiffs and each of the persons of the class to which plaintiffs belong are persons who are either without financial means or of limited financial ability to bear the necessary costs and expenses of these proceedings. Defendants, on the other hand, are corporations, associations and individuals, who own and control vast sums of resources and assets.

4. In April 1963 plaintiffs and each of them sought employment by the Sub-Contractor as an apprentice iron worker. Notwithstanding the application and qualifications of plaintiffs and each of the persons similarly situated, BETHLEHEM STEEL COMPANY has failed and refused to employ these persons or any of them to work on the project covered by Contract No. GS-5PC-1178 solely because of their race and color. For the same reason the Sub-Contractor has refused to employ any person as a structural iron worker who is a Negro. Moreover, though Contractors well-know all of the facts alleged herein to be true, Contractors

have failed and refused to take action, affirmative or otherwise to cause employment of plaintiffs.

5. The provisions of the contract quoted hereinbefore were entered into for the benefit of plaintiffs and persons similarly situated. Plaintiffs are members of a class of persons who, being residents and citizens of the United States, commonly designated as Negroes, are and have been for many years objects and victims of discrimination in employment and exclusion from certain classes and crafts of employment of which the craft of structural iron workers is one. The size of this class is so great and the number of persons so numerous that it would not be practicable for all such persons to join in this action. Plaintiffs therefore bring this action on their own individual behalf and on behalf of that class.

6. All of the defendants herein well know the truth of the allegations contained herein. Notwithstanding the aforesaid, none of the defendants has secured enforcement of the rights of the plaintiffs or the class they represent under the terms of Contract No. GS-5PC-1178. The plaintiffs have no remedy at law which would be adequate.

7. On or about the 6th day of March, 1961, the President of the United States issued Executive Order No. 10925, which provides, in part:

> "WHEREAS discrimination because of race, creed, color, or national origin is contrary to the Constitutional principles and policies of the United States; and
>
> WHEREAS it is the plain and positive obligation of the United States Government to promote and ensure equal opportunity for all qualified persons, without regard to race, creed, color, or national origin, employed or seeking employment with the Federal Government and on government contracts; and

WHEREAS it is the policy of the executive branch of the Government to encourage by positive measures equal opportunity for all qualified persons within the Government; and

WHEREAS it is in the general interest and welfare of the United States to promote its economy, security, and national defense through the most efficient and effective utilization of all available manpower; . . . ."

WHEREFORE, the plaintiffs respectively pray this Court to enjoin the defendants and each of them from proceeding with the performance of Contract No. GS-5PC-1178 unless and until plaintiffs and each of them is duly and regularly employed as an iron workers apprentice or in the alternative that this Court enjoin and restrain the defendants and each of them from making or receiving any payments on account of such contract unless and until plaintiffs and each of them is duly and regularly employed as an iron workers apprentice.

RONALD L. TODD

RONALD L. TODD and MICHAEL COCHRAN *by his parents and next friends, Ulysses Cochran and Patricia Cochran,* and JAMES HILL, *Plaintiffs*

By (s) WILLIAM R. MING, JR.

WILLIAM R. MING, JR.
GEORGE N. LEIGHTON
Of Counsel

APPENDIX B

OF THE
Associated Steel Erectors of
Chicago
and
International Association of Bridge
Structural and Ornamental
Ironworkers
LOCAL UNION NO. 1

Frank D. Reiland
Treasurer
A. Walter Becker
Thomas Cannon
Joseph Frankovic
Stanford Jacobs

Bridgemen
Reinforcing Steel Setters
Structural Ironworkers

Edmund D. Flood
Apprentice Co-Ordinator
Brunswick 8-3439

Headquarters
2405 W. North Avenue
Chicago, Illinois 60647

January 16, 1964

Mr. Ronald Todd
7511 S. Yale Avenue
Chicago 20, Illinois

Dear Sir:

The apprenticeship training program sponsored by the Joint Apprenticeship Committee has in the past always selected its trainees on the basis of the individual applicant's qualifications. However, in an effort to carry out the President's Executive Orders No. 10925, as amended, and No. 11114, as well as No. 29-CFR, Part 30, "Non-Discrimination in Apprenticeship and Training", the Committee has adopted a new selection procedure which we would like to briefly outline in this letter.

Your application is presently on file with the Committee, and it has been our previous policy to call new trainees from these files primarily on the basis of the application date. In the future, we will make this selection based on a semi-annual re-evaluation of all the applicants, which re-evaluation will take into consideration a number of factors. The first, and most important change, is that we will now require an aptitude test. The Committee will then grade each applicant, taking into consideration not only his score on this aptitude test, but also all of the factors which will be brought out in his interview with the Committee. A new list will then be compiled based on the overall scores of each applicant.

It is the intention of the Committee to administer this test every six months, and after the test and interviews have been completed, a new list will be compiled. You can understand that this is necessary in order to give an opportunity to those applicants who apply after the original list is set up. This means that all those men who have applied as of the date of this letter, who are tested and who are put on the initial list, but who are not selected for training during the next six months, must then compete against the new applicants who are tested and interviewed prior to the beginning of the next selection period six months from now.

In order to carry out this new selection procedure, it will be necessary for you to execute a new questionaire form in the Committee's office, take the aptitude test, and be interviewed by the the Committee so that your total score can be determined. Because of the large number of applicants already in the Committee's files, it is necessary for us to schedule your appearance on a certain day, and you have been scheduled for 7:00 P. M., on Jan. 24, 1964. In the event you do not appear in the Committee's office on that

date, or if you do not contact the Committee office for a change in date, it will be understood that you are no longer interested in the apprenticeship training program, and your name will be dropped from our files.

Very truly yours,

Edmund D. Flood
Joint Apprenticeship Committee

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RONALD L. TODD, et al., Plaintiffs, vs. **JOINT APPRENTICESHIP COMMITTEE OF THE STEEL WORKERS OF CHICAGO AND INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL UNION NO. 1, etc., et al.,** Defendants.	No. 63-C-1739.

MOTION

Now comes the plaintiffs by their attorneys, WILLIAM B. MING, JR., and GEORGE N. LEIGHTON, and respectfully move the Court for an order restraining the defendants JOINT APPRENTICESHIP COMMITTTEE OF THE ASSOCIATED STEEL ERECTORS OF CHICAGO and INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL IRONWORKERS, LOCAL UNION NO. 1, JAMES EADS, FRANK D. REILAND, A. WALTER BECKER, THOMAS CANNON, JOSEPH FRANKOVIC, STANFORD JACOBS and EDMUND D. FLOOD and each of them from altering, modifying or changing in any way the standards for selection of apprentices as they may apply to plaintiffs. In support of this motion plaintiffs show to the Court the following:

1. On November 8, 1963, *nunc pro tunc* as of October 16, 1963, this Court entered its decree of preliminary injunction against these defendants and others requiring them to certify two of these plaintiffs, RONALD L. TODD and JAMES HILL, as apprentice ironworkers. On motion of these defendants made on October 16, 1963, the provisions of this order were stayed pending appeal, and the Court fixed the amount of the appeal bond at $1,000.00.

2. On or about December 6, 1963, these defendants and others filed a notice of appeal to the Court of Appeals for the Seventh Circuit from the order of October 16, 1963. These defendants, however, have not filed any appeal bond. On the representation to counsel for plaintiffs by counsel for BETHLEHEM STEEL, one of the defendants herein who has also appealed from the decree of preliminary injunction, that the Clerk of this Court has been unable to complete preparation of the record on appeal counsel for plaintiffs stipulated that the time for filing that record should be extended to February 15, 1964, and by order of this Court of January 13, 1964, that was done.

3. On January 23, 1964, the plaintiffs brought to the attention of their counsel that each of them had been notified by letter from these defendants dated January 16, 1964, that each of these plaintiffs must take some "aptitude test," not otherwise described, to be given by these defendants on January 24, 1964, at 7:00 P. M. According to these letters (a copy of one is attached hereto marked Exhibit A) if any plaintiff does not appear for this test or otherwise contact these defendants "it will be understood that (they) are no longer interested in the apprenticeship training program" and his name "will be dropped from our (The Committe's) files.

4. Immediately on seeing Exhibit A, one of counsel for plaintiffs sought to communicate with Mr. Bernard M. Mamet who represents LOCAL UNION NO. 1 in this cause and Mr. Jerome A. Frazel, Jr., one of counsel for these defendants in this cause. The former asserted that he knew of changes in the apprenticeship standards but that he had nothing to do with their administration. The latter admitted that he had drafted the letter (Exhibit A) but had not provided, or attempted to provide, counsel for plaintiff with any notice or information concerning this matter. Thereupon counsel for plaintiffs orally notified Mr. Frazel that this motion for a protective order would be presented to this Court on January 24, 1964, at 10:00 A. M. Mr. Frazel agreed to be present at this time.

5. The demand by these defendants that plaintiffs take some test or other is a unilateral effort by these defendants to further harm and damage plaintiffs in their efforts to secure admission to this apprenticeship program from which plaintiffs have been excluded solely on account of their race or color, as this Court has found, in violation of this Court's decree of October 16, 1963.

6. Unless this Court now acts to protect plaintiffs and each of them, ,these defendants, and each of them, will continue their practice of exclusion of Negroes, including plaintiffs, from this program.

7. This is a class action brought on behalf of the named plaintiffs and all other Negroes. It is obvious that the requirements alluded to in Exhibit A vitally affect all of the members of the class. No notice has been given to the class. Though plaintiffs and their counsel adequately represent the class there is not sufficient time to enable plaintiffs or their counsel to investigate this matter and apprise the class concerning it. Accordingly, there is a grave pos-

sibility that defendants, and each of them, will do great harm and damage to the plaintiff class by this device unless defendants are restrained by this Court.

WHEREFORE, plaintiffs respectfully pray this Court to enter an order restraining these defendants and each of them from requiring the plaintiffs or any of them from taking any test for selection as apprentices, or in the alternative that the Court vacate its order staying the preliminary injunction and consider this motion a request for a rule to show cause as to why these defendants and each of them should not be held in contempt for violation of that injunction.

Respectfully submitted,

GEORGE N. LEIGHTON and
WILLIAM R. MING, JR.
Attorneys for Plaintiffs

By (s) WILLIAM R. MING, JR.,
WILLIAM R. MING, JR.
123 West Madison Street
Chicago, Illinois 60602
FRanklin 2-1106

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RONALD L. TODD, et al., Plaintiffs, vs. JOINT APPRENTICESHIP COMMITTEE OF THE STEEL WORKERS OF CHICAGO AND INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL UNION NO. 1, etc., et al., Defendants.	No. 63-C-1739.

ORDER

This cause coming on to be heard on the motion of the plaintiffs for a temporary restraining order and the following defendants being present by counsel in open court, namely: JOINT APPRENTICESHIP COMMITTEE by Jerome Frazel, Jr.; BETHLEHEM STEEL by Paul Conaghan; BOARD OF EDUCATION OF THE CITY OF CHICAGO by John T. Mehigan; DOST and TESAURO by John P. Crowley; and the Court having heard the arguments of counsel and being full advised in the premises:

IT IS HEREBY ORDERED that the defendants, JOINT APPRENTICESHIP COMMITTEE OF THE ASSOCIATED STEEL ERECTORS OF CHICAGO and INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL

UNION NO. 1, JAMES EADS, FRANK D. REILAND, A. WALTER BECKER, THOMAS CANNON, JOSEPH FRANKOVIC, STANFORD JACOBS and EDMUND D. FLOOD, be and they are hereby restrained from requiring the plaintiffs or any of them, whether they are named plaintiffs or members of the class on whose behalf this action is brought, from taking any tests for selection as apprentice ironworkers or from otherwise adversely affecting the rights of the said plaintiffs and each of them to full and equal participation in the ironworkers apprenticeship program without discrimination on account of the race or color of the plaintiffs or any of them. This temporary restraining order shall remain in full force and effect until February 3, 1964, subject to further order of the Court.

ENTER:

(s) WALTER J. LABUY
WALTER J. LABUY

Dated: January 24, 1964.